Farmer Bros. Co. *and* Teamsters Local No. 206, affiliated with International Brotherhood of Teamsters, AFL–CIO. Case 36–CA–9253

July 28, 2004

DECISION AND ORDER

BY MEMBERS LIEBMAN, WALSH, AND MEISBURG

On April 22, 2004, Administrative Law Judge William L. Schmidt issued the attached decision. The Respondent and the Charging Party filed exceptions and supporting briefs, the General Counsel and the Charging Party filed answering briefs to the Respondent's exceptions, and the Respondent filed an answering brief to the Charging Party's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.[1]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Farmer Bros. Co., Eugene, Oregon, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

"Provide the Union with the wage information that it requested on February 3 and March 12, 2003."

2. Substitute the following for paragraph 2(b).

"Within 14 days after service by the Region, post at its Eugene, Oregon facility, copies of the attached notice marked 'Appendix.'[2] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 18, 2003."

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. July 28, 2004

Wilma B. Liebman,	Member
Dennis P. Walsh,	Member
Ronald Meisburg,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail to bargain collectively with Teamsters Local No. 206, affiliated with International Brotherhood of Teamsters, AFL–CIO, by refusing to provide

[1] We shall modify the judge's recommended Order to delete the phrase referencing a 14-day period in the requirement to provide the requested information and to correct the date by which the Respondent may be required to mail a copy of the notice to employees. We shall also substitute a new notice to conform to the language set forth in the Order. We further note that in complying with the Order requiring the Respondent to furnish the wage information requested by the Union on February 3, 2003, the Respondent may, consistent with the Union's request, furnish either copies of the W-2 forms or a listing of the income amounts reported for each employee.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

the Union with requested information that is relevant and necessary for the Union to fulfill its role as the collective-bargaining representative of unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide the Union with the wage information that it requested on February 3 and March 12, 2003.

FARMER BROS. CO.

Adam D. Morrison, Atty., for the General Counsel.
Larry B. Garrett, Atty. and *Larry A. Walraven, Atty. (O'Melveny & Meyers LLP)*, of Los Angeles, California, for the Respondent.
David A. Rosenfeld, Atty. (Weinberg, Roger & Rosenfeld), of Oakland, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WILLIAM L. SCHMIDT, Administrative Law Judge. Teamsters Local No. 206, International Brotherhood of Teamsters, AFL–CIO (Charging Party or Union) filed the charge in Case 36–CA–9253–1 on March 27, 2003. Nevertheless, the Acting Regional Director for Region 19 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing on December 24, 2003. The complaint alleges that Farmer Bros. Co. (the Respondent) violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act) by failing and refusing to furnish the Union with requested information that is necessary and relevant to the Union's performance of its duties as the exclusive bargaining representative. Respondent filed a timely answer denying the essential allegations.

On March 3, 2004, Respondent, the Charging Party, and the General Counsel filed a joint motion and stipulation of facts waiving a hearing before an administrative law judge and submitting the case directly to an administrative law judge for findings of fact, conclusions of law, and a proposed Order, based on a record consisting of the charge, the complaint, and notice of hearing, the answer, and a stipulation of facts. On March 9, 2004, I granted the parties' motion and approved the stipulation. Thereafter, all parties filed briefs. As permitted in my order granting the joint motion, General Counsel and Respondent filed reply briefs.

On the entire record and my careful consideration of briefs filed by the General Counsel, Respondent, and the Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a California corporation with an office and place of business in Eugene, Oregon, is in the business of roasting, packaging, selling, and distributing coffee and various other allied food service products. During the last 12 months, in conducting its business operations, Respondent purchased and caused to be delivered to its Eugene, Oregon facility goods and materials valued in excess of $50,000 directly from sources outside the State of Oregon. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

Respondent is a multistate roaster and purveyor of coffee and other wholesale food products. In order to sell and deliver its products to its customer base, which consists of restaurants, gas stations, convenience stores, hospitals, and other food service businesses, Respondent employs route sales representatives. Ken Carson, Respondent's vice president of sales, manages all of the sales operations.

The Union is the exclusive bargaining representative of the route sales representatives employed at Respondent's Eugene, Oregon facility. All four of the route sales representatives in Eugene are union members. The Union and Respondent, and over 20 other locals, are parties to a collective-bargaining agreement in effect for the period of February 1, 2002, through January 31, 2005 (agreement). The agreement is a minimum-term agreement and contains a union-security clause that requires Respondent to discharge unit employees who fail to remain in good standing with the Union with respect to union dues. The agreement, however, does not require Respondent to provide dues checkoff. Article 1, section 4 of the agreement only obligates Respondent to provide for dues checkoff if all of the locals subject to the agreement vote to enact dues checkoff. Currently, the locals have not done so, nor are the Respondent and the Union engaged in bargaining, or preparing to bargain, the terms of any future collective-bargaining agreements.

Under the terms of the agreement, the route sales representatives are paid a weekly base rate of pay. In addition, Respondent provides unit employees with "route incentive compensation," essentially a sales commission; however, these commissions are not included in the terms of the agreement. The Union charges dues on a monthly basis at an amount equal to two and a half times each member's hourly wage.[1] Since the route sales representatives work on commission, the Union computes their monthly dues by taking the average annual compensation of the unit and converting it into an hourly wage, then multiplying that figure by two and a half. Dues are collected directly from members.

Since 2002, the Union has requested W-2 information annually from employers who compensate their employees with sales commissions, including Respondent. On April 3 and May 24, 2002, the Union requested 2001 W-2 information from Respondent, and an employee in Respondent's payroll department inadvertently provided the Union with the information.

[1] By a notice dated April 15, 2004, I advised the parties of an apparent typographical error in the stipulation of facts statement regarding the calculation of dues and invited comment in the event my perception was incorrect. No party responded in the time provided. That notice is made a part of the record.

On June 18, 2002, Ken Carson informed the Union by letter that Respondent would not provide the 2001 W-2 information.

On February 3, 2003, Stefan Ostrach, the Union's business representative, sent a letter to Respondent requesting 2002 W-2 information in the form of copies of the W-2 forms or a list of the amounts reported for each employee. In response, Carson sent a letter to Ostrach on February 18, 2003, refusing to provide the information. The letter stated that Respondent was "upholding [its] policy and practice of not releasing Route Incentive compensation to anyone" after defending against unfair labor practice charges. It further noted that if the Union received any information about route incentive compensation in the past, "it was in error on our part and should not have occurred." On March 12, 2003, Ostrach responded by letter stating that it was the Union's understanding that it is presumptively entitled to this information and renewed its request. The letter asked for a copy of any decision issued by the Board to clarify whether the defense Carson mentioned was successful or not. Carson replied in a letter on March 14, 2003, stating Respondent had successfully defended against unfair labor practice charges filed by another local that was party to the agreement. The March 14 letter purported to enclose a copy of the charge and decision specifically regarding its position on W-2 gross earnings, but copies were not attached as exhibits and are consequently not part of the record in this case.

B. Analysis and Conclusions

When a union requests information from an employer that is relevant and reasonably necessary to the proper performance of its duties as exclusive bargaining representative of the employees, the employer's duty to bargain in good faith, established by Section 8(a)(5) of the Act, requires it to comply with the request. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967); *NLRB v. Truitt Mfg. Co*., 351 U.S. 149 (1956). The right to this information exists not only for the purposes of negotiating a collective-bargaining agreement, but also for proper administration of an existing contract. *Westinghouse Electric Corp.*, 239 NLRB 106, 107 (1978). The Board uses a liberal, discovery-type standard to determine relevance, and information related to the terms and conditions of employment of bargaining unit employees is presumptively relevant to the proper performance of the union's bargaining duties. *New Surfside Nursing Home*, 330 NLRB 1146, 1148 (2000). Such information involves "the core of the employer-employee relationship," so no specific showing of relevance is required of the union. *Brooklyn Union Gas Co.*, 296 NLRB 591, 595 (1989).

Information regarding employee wages relates to employees' terms and conditions of employment. *Jano Graphics, Inc.*, 339 NLRB No. 38, slip op.at 7, 9–10 (2003). The Board has held specifically that W-2 information falls within this category. See *MBC Headwear, Inc.*, 315 NLRB 424, 427 (1994); *Mann Theatres Corp. of California*, 234 NLRB 842, 843 (1978); *New Surfside Nursing Home*, 330 NLRB at 1148. *In Mann Theatres*, the Board stated "the data, . . . whether via W-2 summary or simply stated in writing, is squarely within the category of information which a labor organization must legitimately have to effectively administer its contract." 234 NLRB at 843. Thus, the information sought in this case is presumptively relevant, and the Union need not articulate specific reasons for its relevance.

When information is presumptively relevant, the employer has the burden of rebutting the presumption by proving that it is either not relevant or that it cannot, in good faith, supply the information. *Coca Cola Bottling Co.*, 311 NLRB 424, 425 (1993). Respondent attempts to rebut the presumption of relevancy in this case not by proving that the W-2 information is irrelevant or that it cannot in good faith provide it, but by asserting that the Union requested the information in bad faith. An employer is not obligated to comply with a request for wage information when the information is "not sought in good faith by the union as an aid to the performance of its statutory duties but is sought for a bad-faith purpose." *Industrial Welding Co.*, 175 NLRB 477, 480 (1969).

Respondent argues in its brief that when a union seeks wage information for the sole purpose of verifying dues obligations, the request is made in bad faith. To support its contention, Respondent essentially relies on two cases, *BRF Broadcasting Corp.*, 181 NLRB 560 (1970); and *Utica Observer-Dispatch v. NLRB*, 229 F.2d 575 (2d Cir. 1956). Neither case, however, held that the Union's request was made in bad faith. Although Respondent asserts that the law is plain as to this matter, it has failed to cite to any case that actually holds that a union cannot request information to verify the dues obligations of its members. In fact, in Utica Observer-Dispatch, the Second Circuit Court of Appeals upheld the Board decision that overruled the Trial Examiner who dismissed the charge because the Union wanted it to aid in dues collection rather than for bargaining purposes, because there was substantial evidence that the Union made the request in good faith. 229 F.2d at 577.

Further, the Union has made a showing that the wage information is necessary for contract administration, because it must have it to police the union-security clause in the agreement. Respondent has a duty to supply information that is necessary to administer and police an existing collective-bargaining agreement. *Westinghouse Electric Corp.*, 239 NLRB at 107. If the requested information relates to an existing contract provision, it thus is information that is "demonstrably necessary to the union" if it is to perform its duty to enforce the agreement. *A-Plus Roofing, Inc.*, 295 NLRB 967, 970 (1989), enfd. 39 F.3d 1410 (9th Cir. 1994). The W-2 information is necessary to enable the Union to enforce the union-security provision in the contract. In *Mann Theatres*, the Board affirmed the decision of the judge who held that the employer's failure to provide W-2 information was an unfair labor practice. 234 NLRB at 842. One of the reasons the Union needed the information was to verify compliance with a typical union-security clause. The judge stated that the clause "serves to stabilize the Union's representational role." Financial flow based on that provision cannot be intelligently known until the employees' gross earnings are revealed." 234 NLRB at 843.

In addition, pursuant to *Philadelphia Sheraton Corp.*, 136 NLRB 888, 896 (1962), enfd. 320 F.2d 254 (3d Cir. 1963), the Union has a fiduciary duty to notify employees of their dues obligations. Before a union can ask an employer to discharge an employee for failure to pay dues, it must first inform the employee of "the amount of dues owed, the method used to

calculate that amount, and the date by which the dues are to be paid." Id. To charge a union with that duty but prevent it from acquiring the wage information it needs to calculate dues would place contradictory obligations on it. The Union does not allege that any of its members are in arrears or that it is seeking to discharge any employees. However, that does not change the analysis because, without knowing the wage information of employees paid on commission, it cannot properly verify what the employees owe in the first place. The fact that the information may be available directly from the employees does not relieve Respondent of the duty to provide it to the union. *BFR Broadcasting Corp.*, 181 NLRB at 562.

Respondent also contends that the Union should not be allowed to enforce the union-security clause because individual dues obligations are assessed differently depending on whether the employee works on commission or not. Since noncommissioned employees pay monthly dues equaling two and half times their hourly rate of pay without regard to compensation paid to any other employees while commissioned-employees pay dues based on the unit's total annual compensation, Respondent argues the dues are not "uniformly required" as a condition of membership and thus violates Section 8(b)(2) of the Act. I do not agree.

The Board has held that differences in rates for dues and fees are lawful so long as they are based on a "reasonable general classification; that is, one that is not discriminatory." *Aluminum Workers Trade Council*, 185 NLRB 69, 70 (1963). Respondent's reliance on *Actors Equity Assn. (Clark)*, 247 NLRB 1193 (1980), enfd, 644 F.2d 939 (2d Cir. 1981), is misplaced. There, the Second Circuit found the dues lacked uniformity because they were based on a discriminatory alienage classification. *Under Graham v. Richardson*, 403 U.S. 365, 372 (1971), state alienage classifications are "inherently suspect" and are subject to close judicial scrutiny. No unlawful categorization is involved here, as classifying members according to whether they earn commissions is reasonable and nondiscriminatory. All commissioned employees must pay monthly dues based on a percentage of the unit's total annual compensation. I find that sufficient to satisfy the Act's uniformity requirement.

Finally, I reject Respondent's assertion that the Union's dues calculation system "requires Farmer Bros. to effectively checkoff dues in order to implement." It obviously does nothing of the kind. Respondent's charge that an order requiring it to furnish wage information which could be used by the bargaining agent for dues calculation and numerous other relevant purposes effectively vitiate the bargain struck at the negotiating table lacks logical substance. Accordingly, I find that Respondent failed to carry its burden of rebutting the presumption that the information sought by the Union is relevant and that it violated the Act, as alleged.

REMEDY

Having found that the Respondent engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, I will order that it cease and desist its unlawful conduct and take certain affirmative action as will effectuate the Act.

On these findings of fact and on the entire record in this case, I make the following

CONCLUSIONS OF LAW

1. Respondent is, and has been at all material times, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is, and has been at all material times, a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent engaged in an unfair labor practice within the meaning of Section 8(a)(5) and (1) of the Act by refusing to furnish to the Union, pursuant to its request, copies of unit employees W-2 forms or a list of income amounts reported by each employee,

On these findings of fact and conclusion of law, and on the entire record in this case, I issue the following[2]

ORDER

The Respondent, Farmer Brothers Company, Eugene, Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to bargain collectively with Teamsters Local No. 206, International Brotherhood of Teamsters, AFL–CIO, by refusing to provide the Union with requested information that is relevant and necessary for the Union to fulfill its role as the collective-bargaining representative of unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in exercise of their Section 7 rights to organize and bargain collectively or to refrain from such activities.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Within 14 days from the date of this order, provide the Union with the wage information that it requested on February 3 and March 12, 2003.

(b) Within 14 days after service by the Region, post at its Eugene, Oregon facility, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time after March 27, 2003.

---

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated: April 22, 2004, San Francisco, California.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with Teamsters Local No. 206, International Brotherhood of Teamsters, AFL–CIO (Union), as exclusive representative of our employees, including route sales representatives, with respect to rates of pay, wages, hours, and other terms and conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union with wage information pertaining to our route sales representatives, which it requested in February and March 2003.

FARMER BROS. CO.